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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,094	10/12/2005	Bettina Balslev Sorensen	PATRADE	8613
James C Wray 1493 Chain Bridge Road Suite 300 McLean, VA 22101			EXAMINER QUINN, RICHARD LEE	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 09/17/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/544,094

**Applicant(s)**

SORENSEN, BETTINA BALSLEV

**Examiner**

RICHALE L. QUINN

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-11, 13, 15-18 and 20 - 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 13, 15-18 and 20 - 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Response to Amendment***

The amendment filed on 6/2/2010 has been fully considered. Claims 1-7, 9-11, 17-18 and 20 -21 were amended. Claims 8, 12 and 14 are cancelled. Currently claims 1-7, 9-11, 13, 15 -18 and 20 - 24 are pending.

***Claim Objections***

1. Claim 4 is objected to because of the following informalities: Applicant recites "wherein for sewing together". Applicant's language is awkward and appears to be an error of syntax. Appropriate correction is required.
2. Claim 2 -4 are objected to because of the following informalities: The claims recite process steps that do not further limit the structure of the preceding apparatus claims. Appropriate correction is required.
3. Claims 15 - 18 and 23 are objected to because of the following informalities: The preambles recite "the method of claim". However, claims 15 - 18 depend from apparatus claims. Appropriate correction is required.
4. Claims 15 -16 are objected to because of the following informalities: Applicant recites "the" in reference to areas exerting compression. Independent claim 1 references a front half for exerting compression on an abdomen, but fails to recite the phrase "areas exerting compression" and is therefore lacking proper antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 – 4, 6-7, 9- 11, 13, 15, 16, 20, and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Browder, Jr. (US 5,572,888). The device of Browder, Jr. discloses a clothing article capable of being worn by a person having an ostomy hernia, the clothing article is made with an abdominal portions (24) located on the front half (Figure 1) of the garment for exerting compression (Column 2, lines 13-15) to the abdominal region and is intended to be disposed around the lower portion of the body, the clothing article is characterized by knitting a seamless tubular (column 1, lines 60 - 64) which is made with an anatomic fit in a predefined size and shape and establishing a firm, elastic (Column 2, lines 19-21) structure. The device of Browder, Jr. is made on a body size electric circular knitting machine (Column 1, lines 60—61) and is selectively fixed on the machine form having a predetermined size and shape as the item is being constructed and is sewn together forming a panty brief with a lower body area, groin area and leg openings (Column 3, lines 56-61) capable of being fixated on a form. The extension of the garment is performed with varying intensity (Column 3, lines 46- 40) for establishing varied extension or elasticity and firmness in the article giving varied compression when the clothing article is placed on the body. The device of Browder, Jr. discloses elastic yarns present in the apparel apparatus comprising 70 denier Lycra yarn covered with 70 denier 46 filament covered yarn, and a second two

ply nylon yarn of 60 denier 68 filament (Column 3, lines 64-67), and therefore it can be determined that the elastic fibers equals approximately 50% by linear weight in the front abdominal region for exerting compression on the wearer. The abdominal area (24) is formed with fixed elastic yarns (Column 3, line 64) that is not found in other areas of the garment thereby creating varied elastic firmness and compression (Column 2, lines 2-5 and Column 4, lines 1-2) in the abdominal region when placed on a user to provide an anatomical fit. The elastic yarns described in Column 3, lines 64 - 67 are found only in the abdominal region (24) at the front of the garment. It is noted that the recitation "for producing compression of between 15 to 50 mmHg" is a functional recitation. The device of Browder, Jr. meets all the structural limitations claimed by applicant and is therefore interpreted to perform in the same manner as the claimed apparatus having a compression of between 15 – 50 mmHg and would have a material that displays a force/elongation curve including a largely flat curve pattern as recited by applicant. With regard to applicant's recitation requiring that the sewing together of the groin area is done before the fixation of the panty brief on a form, it is noted that this a product by process limitation and is not given patentable weight. It is noted that the order in which this step occurs is irrelevant to the finished device The device of Browder, Jr. discloses an end product having groin area (26) and tubular item (22) sewn together at one end (Column 3, line 56) forming a panty brief with lower body part, groin area and leg openings (Figure 2). The device is made by a circular knitting machine (Column 3, 18 - 24) and is capable for production on either a body size machine or rectilinear machine with two needle bars. The device of Browder, Jr. discloses a garment having elastic

yarns in an abdominal front region (12) having a thickness of 100 to 350 decitex or 150 - 250 decitex (Column 4, line 5) located on the front half of the garment in areas (12) exerting compression on the user. It is noted that a 140 denier yarn is the equivalent to a 155.6 decitex yarn.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Browder, Jr. in view of Sinigagliesi (US 2,736,036). The device of Browder, Jr. substantially discloses the claimed invention but is lacking a groin area having an aperture. The device of Sinigagliesi discloses a tubular knit garment having an aperture (13) in the groin area. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the device of Browder, Jr. by utilizing the aperture taught by Sinigagliesi in order to provide access to the genitals from the exterior surface of the garment (column 2, lines 55 – 68).

9. Claims 17, 18, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Browder, Jr. The device of Browder, Jr. substantially discloses the claimed invention but is silent as to the weight per square meter of compression on the user's body. The USPTO office does not have a laboratory to perform testing, and since the device of Browder, Jr. meets all of the structural recitations as claimed by applicant,

it is interpreted to perform the function of compression in the same manner as the claimed invention, at a weight per square meter of between 250 and 450g/m<sup>2</sup>. The applicant does not provide criticality in the specification to the specific ranges claimed and therefore the prior art referenced meets the cited limitations.

### ***Response to Arguments***

Applicant's arguments with respect to claims filed 6/2/2010 have been considered but are moot in view of the new ground(s) of rejection.

Applicant states that during an interview on June 2, 2010, examiner indicated that the amended claims overcame the 102 and 103 rejections on record. It is noted specific claim language was not discussed- the examiner suggested the applicant more clearly define the elastic fiber composition and the structure with regard to the abdominal portion. It is impossible to ascertain the allowability of a claim during an interview without formally filed claim language for review. Applicant's amendments did overcome the previous rejection of record (Browder 6,276,175); however, upon further review of the amended claims it was found that Browder 5,572,888 is anticipatory.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RICHALE L. QUINN whose telephone number is (571)272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L Quinn



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Examiner  
Art Unit 3765

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Examiner, Art Unit 3765

/KATHERINE MORAN/  
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